

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6464 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

K I PATEL

Versus

M N VAISHNAVA

Appearance:

None present for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/03/98

ORAL JUDGMENT

#. The matter was called out for hearing in the first round, then in the second round and lastly in the third round, but none put appearance on behalf of the petitioner or respondents. Perused the Special Civil Application and the reply filed by the respondents thereto.

#. The petitioner, a Range Forest Officer of the Forest Department, Government of Gujarat, challenges in this petition, the notice of the respondent dated 11.9.86, under which he was informed that he will be prematurely retired after three months from the receipt of the said notice, in the public interest, and later on retired on 20th December 1986.

#. Under Rule 161 of the Bombay Civil Service Rules, 1959, power vests with the Government to retire an employee/officer prematurely subject to fulfilment of condition as provided under the said provision. On this point, the petitioner has not raised any dispute. The only dispute has been raised that he could not have been considered to be a dead-wood or of no worth whatsoever for the Government services, and as such, to be chopped off.

#. From the reply to the Special Civil Application, I find that the service record of the petitioner was not good. There were adverse remarks in his Annual Appraisal Performance reports for the years 1977-78, 1981-81. 1982-83, and for the period from 5.9.83 to 31.3.84. The adverse remarks for the aforesaid years have been served to the petitioner and the petitioner has not filed any representation against those remarks. The petitioner has not filed any rejoinder to the reply filed by the respondents, and as such, the averments made therein stand uncontroverted. The petitioner has deliberately concealed material fact from this Court that he was having adverse remarks in his Annual Appraisal Performance reports for the years 1977-78, 1981-82 and for the period from 5.9.83 to 31st March 1984. The petitioner has only disclosed in the Special Civil Application that the adverse remarks were given to him for the year 1982-83. In a case where the Government servant approaches this Court under Article 226 of the Constitution, then it is his obligation to disclose all material facts fairly and candidly and in case any material fact is concealed, then it has to be viewed by Court seriously. Otherwise also, it cannot be said that there was no material on the record before the authority to form an opinion for retiring the petitioner prematurely. In the matter of premature retirement of the Government servant, this Court has very limited power of judicial review. This Court is not sitting as an appellate Court over the decision of the competent authority in the matter of retiring its employees prematurely. The object of premature retirement is to see that the inefficient and incorrect persons are removed, but no sufficient material is available to

dismiss or remove them from the Government service after enquiry, and as such, they are weeded out from service with a view to secure efficiency in public service and to maintain honesty and integrity amongst the service persons. However, while taking a decision to retire a Government employee prematurely from the service, the Government has to consider the entire record of the Government servant, including the latest reports. It is no more res-integra that premature retirement is not a punishment and the employee who is ordered to be prematurely retired from the Government service is entitled to all pensionary benefits. What safeguard is provided is that there must be some material on the record to form opinion and in case there is some material on record, then the decision taken by the authority may not be subject to scrutiny of this Court, unless the petitioner has made out a case of malafide exercise of powers or where the Government has taken resort to its powers of retiring its employee prematurely with the object to punish the employee concerned, which is not the case here.

#. The net result of the aforesaid discussion is that the notice impugned in this Special Civil Application does not suffer from any illegality or infirmity which calls for interference of this Court sitting under Article 226 of the Constitution of India. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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(sunil)